

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 2777 of 1986

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

-
1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PATEL CHHITABHAI KABHAIBHAI
VERSUS
VITHALBHAI MULJIBHAI PATEL

Appearance:

MR GR SHAIKH for the Petitioner
MR SD PATEL for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 30/12/1999

C.A.V. JUDGMENT

1. The petitioner challenges the order of the Gujarat Revenue Tribunal, Ahmedabad dated 13th January, 1986 passed in TEN.B.A. 861/83 under which the revision

application filed by him has been dismissed.

2. The facts of the case are that the Mamlatdar and A.L.T., Sinor suo motu started an inquiry under section 32 (1B) of the Bombay Tenancy and Agricultural Lands Act, 1948 in respect of the land bearing survey numbers 161/1 and 324/1 admeasuring 1 acre and 20 gunthas and 1 acre and 29 gunthas respectively situated in village Kukas, Taluka Sinor, Dist. Baroda. After hearing the parties, the Mamlatdar and A.L.T. Sinor vide its order dated 24th April, 1978 in Tenancy Case No. 1862 of 1979 ordered to close the proceedings on the ground that the tenant herein the petitioner had surrendered the land in favour of the landlords. The said decision of the Mamlatdar and A.L.T. Sinor has been taken by the petitioner-tenant in appeal in the Court of Deputy Collector of Dabhoi. The case was registered as Tenancy Appeal No. 81/78. The appellate authority dismissed that appeal on 19th August, 1979. The petitioner has not felt content and satisfied and he has taken this matter to the Tribunal by filing revision application NO. TEN.B.A.976/79. Learned Tribunal concluded the matter in favour of the tenant petitioner vide its order dated 22nd January, 1981. The landlord-respondent herein has brought the matter before this court by filing special civil application NO. 2546 of 1981. That petition was allowed. This court has held that the surrendering of the possession of the land by the tenant-petitioner in favour of the landlord was legal and valid. However, the matter has been remanded back to the Tribunal as the matter as decided on preliminary issues. After remand the matter was taken up for hearing and after having heard the learned counsel for the parties under the order dated 13th January, 1986, the revision application was dismissed. Hence, this special civil application by the tenant-petitioner before this court.

3. Shri G.R. Shaikh, learned counsel for the petitioner submitted that the partition of the land amongst the members of the family is bad in law. As the partition itself is bad in law, on the basis of which no benefit could have been taken by the respondent. It has next been contended that the tenant has already acquired the ownership of the land on 1-4-1957. Carrying this contention further, learned counsel for the petitioner submits that the surrender if any is made of the possession of the land by the petitioner is of no consequence whatsoever. In support of his contention he has made reference to the decision of the Apex Court in the case of Chinubhai vs. Narayan Rao reported in AIR 1965 SC 1457, in the case of Hiraji Tolaji Bagwan vs.

Shakuntala reported in AIR 1990 SC 619 and in the case of Tarak Prasad Rajaram vs. Vest Ukara reported in AIR 1991 SC 1034.

4. In contra, Shri S.D. Patel, learned counsel for the respondent contended that this matter is squarely covered by the decision of the Apex Court in the case of D.T. Kadam vs. R.B. Dubal reported in 36 (1) GLR 344. It has next been contended that when the possession of the land has been voluntarily surrendered to the landlord by the petitioner on 10-6-1972 nothing now remains to be done in favour of the petitioner. Surrender of the land in favour of the petitioner was legally valid which has already been concluded finally between the parties by this court vide its decision dated 25th October, 1982 in special civil application no. 2546 of 1981. Lastly it is contended that the learned Tribunal has decided the matter in accordance with law and there is no error apparent on the fact of the order and this court may not interfere with the same under Article 227 of the Constitution. Carrying this contention further the counsel for the respondent submitted that the petitioner and the respondent were minor on 1-4-1957 and as such there is no question of any accrual of right of ownership as deemed purchaser in favour of the petitioner with effect from the said date i.e. 1-4-1957.

5. I have considered the rival contentions made by the learned counsel for the parties.

6. The date of birth of the respondent is 19th December, 1953 and I find sufficient merits in the contention of the learned counsel for the respondent that on 1-4-1957, the respondent was minor. It is true that there is no evidence on the record of this special civil application nor the learned counsel for the respondent has pointed out any material to support that the partition amongst the family members was taken place of the land in the year 1954. But it is not in dispute that on 10-10-1956 the necessary correction has been made in the revenue record and the land in dispute was mutated as a result of partition in favour of the respondent. The surrender of the possession of the land in dispute had been made in favour of the respondent by the petitioner on 10-6-1972. The respondent attained majority on 19-12-1971 and thereafter this surrender of the possession of the land was made. There is no dispute on the question of fact that the surrender of the possession of the land has been made in favour of the respondent by the petitioner voluntarily. Otherwise

also, whatever dispute regarding the surrender of this land is concerned, it is suffice to say that it was held to be legal and valid inter-se the parties by this court under its judgment dated 25-10-1982 in special civil application NO. 2546 of 1981 and this decision is binding on the parties.

Re: Question of Unequal Partition.

7. In para-15 of the judgment, the Tribunal has held as under:

Firstly, as the partition took place in 1954 and as the Hindu Succession Act came into operation on 17-6-1956 giving no share to sisters, cannot be said to be unequal partition. Hence the point of unequal partition does not survive.

8. I do not find anything in the finding and as there on the record in support of the plea of the respondent that the partition took place in 1954. The reasoning given by the Tribunal may not be correct on the facts but I fail to see any merits in the contention of the learned counsel for the petitioner that even if the share in the land were not given to the sisters after coming into force of the Hindu Succession Act, 1956, this partition will become invalid. It is a matter of which notice can be taken that in the Hindu society, it is not unknown that the sisters voluntarily relinquish their right in the joint family property. It is a matter though it has not been specifically pleaded but as the Tribunal accepted the fact that the partition has taken place in 1954 there was no occasion for it to go on this fact. Learned counsel for the petitioner has failed to point out that merely because the sisters were not given share in the property, the partition be taken to be invalid. It is an arrangement between the members of the joint family and if voluntarily the sisters are surrendering their shares in the joint family property how far it is justified on the part of the petitioner to make out the capital out of it.

9. So far as to the points regarding the validity of surrender of the possession of the land and the vesting of the land in the petitioner, it is suffice to say that these are not of any merits and substance. The vesting of land does not arise as the respondent was minor at the relevant time and so far as the validity of surrender of the possession of the land is concerned, in view the decision of the Apex Court in the case of D.T. Kadam vs. R.B.Dubal (supra) it no more now available to

the petitioner. The surrender, as said earlier, and at the cost of repetition it is stated, of the possession of the land by the petitioner it has already been held to be legal and valid by this court.

10. In view of this legal position and the decision of this court given earlier, I do not find any illegality in the order of the Tribunal which calls for the interference of this court.

11. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief if any, granted by this Court stands vacated. No order as to costs.

zgs/-